

THE HONORABLE JUDGE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BACKPAGE.COM. LLC,

Plaintiff,

-vs-

ROB MCKENNA, Attorney General of the State of  
Washington, et al.,

Defendants.

NO. C12-00954-RSM

DEFENDANT KITSAP  
COUNTY PROSECUTING  
ATTORNEY RUSSELL D.  
HAUGE'S MOTION FOR  
DISMISSAL RE: PLAINTIFF  
INTERNET ARCHIVE  
PURSUANT TO FED.R.CIV.P.  
12(b)(6)

**NOTE ON MOTION  
CALENDAR: JULY 27, 2012**

**I. Motion**

Comes now Defendant Kitsap County Prosecuting Attorney, Russell D. Hauge, by and through his attorney of record, Chief Deputy Prosecuting Attorney, Ione S. George, and moves for dismissal of any/all 42 U.S.C. Section 1983 claims against him, as Plaintiff Internet Archive has failed to state a claim upon which relief can be granted. This motion is based upon the records and files herein, and Fed.R.Civ.P. 12(b)(6).

KITSAP COUNTY PROSECUTING ATTORNEY RUSSELL D. HAUGE'S  
MOTION FOR DISMISSAL RE: PLAINTIFF INTERNET ARCHIVE PURSUANT  
TO FED.R.CIV.P. 12(B)(6) - (C12-00954-RSM)-- 1

**RUSSELL D. HAUGE**  
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## II. The Complaint

In its Complaint, Plaintiff Internet Archive alleges multiple violations of both Federal Statutes and Constitutional rights and sets forth three distinct claims, pursuant to 42 U.S.C. §1983, for these alleged violations. By means of factual support for these claims, at page 5, line 23, Internet Archive's Complaint begins a three-page section entitled "Factual Allegation."

However, at no point in this factual narrative, nor in any other section of Internet Archive's Complaint, is Prosecutor Russell D. Hauge identified other than as a named party. Neither, at any point in Internet Archive's Complaint, is any act of Kitsap County Prosecutor Russell D. Hauge identified or described. Indeed, absent the caption and the identification of the parties, no reference to Prosecutor Hauge is made in the entirety of Internet Archive's Complaint.

## III. Fed.R.Civ.P. 12(b)(6)

"Upon a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Court limits its review to the allegations of material fact set forth in the complaint, which are taken to be true and viewed in the light most favorable to the non-moving party together with all reasonable inferences therefrom.<sup>1</sup> Dismissal can be based on both the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.<sup>2</sup> Conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss, and need not be accepted as true.<sup>3</sup> "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations (citations omitted), a plaintiff's obligations to provide the "grounds" of his "entitlement" to relief" requires more than labels

<sup>1</sup> *Pierce v. NovaStar Mortg., Inc.* 422 F.Supp.2d 1230, 1233 (2006), citing, *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.1998)

<sup>2</sup> *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.1990).

<sup>3</sup> *Id.*; see also, *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir.1992),.

1 and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”<sup>4</sup>

2 Because Internet Archive’s Complaint contains no allegations of material fact regarding  
3 Prosecutor Hauge or any action he may have taken, the Complaint is void of any grounds upon which  
4 to base the Plaintiff’s claimed entitlement to relief pursuant to 42 U.S.C. § 1983.  
5

6 It is required that a complaint include “a short and plain statement of the claim that will give the  
7 defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Lee v. City of*  
8 *Los Angeles*, 250 F.3d 668, 679 (9<sup>th</sup> Cir. 2001). To succeed in a 42 U.S.C. § 1983 action against an  
9 individual, a plaintiff must establish that a defendant was acting under color of state law and that the  
10 defendant deprived him “of a right, privilege or immunity secured by the constitution or laws of the United  
11 States.” *Kildare v. Saenz*, 325 F.3d 1078, 1086 (9<sup>th</sup> Cir. 2003). Therefore, in its Complaint, Internet  
12 Archive was required to “plead specific facts and allege a cognizable constitutional violation in order to  
13 avoid dismissal for failure to state a claim.” *Mills v. Criminal District Court*, 837 F.2d 677, 678 (5<sup>th</sup> Cir.  
14 1988).  
15  
16

17 Here, Internet Archive’s Complaint fails to meet this minimal standard. The Complaint fails to  
18 allege any constitutional violation that Internet Archive has suffered, and similarly, is void of any  
19 reference as to how Prosecutor Hauge may have caused any such violation. Clearly, such a general claim  
20 does not sufficiently allege a *cognizable* constitutional violation, nor does it provide Defendant Hauge with  
21 fair notice of what actions he must defend.  
22

23 Because Internet Archive has failed to identify act committed under the color of law by Prosecutor  
24 Hauge which caused a constitutional violation or deprived it of a right secured by law, any and all claims  
25 filed against Prosecutor Hauge, pursuant to 42 U.S.C. §1983, must be dismissed. Similarly, Internet  
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27 <sup>4</sup> *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 l.Ed.2d 929 (2007), quoting, *Sanjuan v.*  
28 *American Bc. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (C.A.7 1994).

1 Archive's request for reasonable costs and attorneys' fees pursuant to 42 U.S.C. §1983 must be dismissed,  
2 and no award of fees or costs against Prosecutor Hauge be imposed.<sup>5</sup>

3  
4 **IV. Conclusion**

5 Based upon the foregoing, Defendant Kitsap County Prosecuting Attorney Russell D. Hauge  
6 respectfully requests that any and all of Plaintiff Internet Archive's 42 U.S.C. §1983 claims and/or  
7 requests for fees and costs against him be dismissed with prejudice, as Internet Archive has failed to  
8 state a claim upon which relief can be granted.

9  
10 Respectfully submitted this 5<sup>th</sup> day of July, 2012.

11  
12 RUSSELL D. HAUGE  
Kitsap County Prosecuting Attorney

13 By: /s/ Ione S. George  
14 IONE S. GEORGE  
15 WSBA No. 18236  
16 Chief Deputy Prosecuting Attorney  
17 Attorney for Defendant Russell D. Hauge,  
18 Kitsap County Prosecuting Attorney  
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27 <sup>5</sup> Specifically, if Plaintiff prevails on any request for declaratory judgment or other injunctive relief, no award of fees  
28 against Defendant Hauge pursuant to 42 U.S.C. §1983 may be imposed, as Plaintiff has failed to state a 42 U.S.C. §1983  
claim against Prosecutor Hauge upon which relief can be granted.

# **CERTIFICATE OF SERVICE**

I certify that on July 5, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ambika K. Doran DAVIS WRIGHT TREMAIN (SEA) 1201 Third Ave. Ste. 2200 Seattle, WA 98101-3045 206.757.8030 <a href="mailto:ambikadoran@dwt.com">ambikadoran@dwt.com</a>	James C. Grant DAVIS WRIGHT TREMAIN (SEA) 1201 Third Ave. Ste. 2200 Seattle, WA 98101-3045 206.757.8096 <a href="mailto:jamesgrant@dwt.com">jamesgrant@dwt.com</a>
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EXECUTED this 5th day of July, 2012 at Port Orchard, Washington.



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